

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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Federal Communications Commission
Washington, D.C. 20554

In The Matter Of

Amendment of Section 73.606(b)
Table of Allotments,
Television Broadcast Stations
(Decatur and Plano, Texas)

MM DOCKET NO.

RM-10094

To: Chief, Mass Media Bureau

**PETITION FOR RULE MAKING AND FOR ORDER
MODIFYING CONSTRUCTION PERMIT**

Word of God Fellowship, Inc. ("Word of God"), proposed permit-
tee of KMPX(TV), Channel 29, Decatur, Texas, by its attorneys,
hereby requests that the Commission issue a Notice of Proposed Rule
Making to amend the Television Table of Allotments to change the
community of license of Channel 29 from Decatur to Plano, Texas, and
to concurrently modify the construction permit for Station KMPX(TV)
to specify the new community of license. This petition is submitted
pursuant to the Commission's recently adopted Report & Order, 4 FCC
Rcd 4870 (1989) (hereinafter "Report & Order"), which amended
Section 1.420 of the Commission's rules to allow a licensee or
permittee to request a new community of license in rule making
proceedings to amend the tables of allotments without placing its
existing authorization at risk. In support whereof, the following
is shown:

1. On March 3, 1989, an application (File No. BAPCT-890303KM) was filed to assign to Word of God the construction permit of KMPX, a new television station to operate on Channel 29, Decatur, Texas. That application remains pending.² Decatur is the community of license specified for Channel 29 in Section 73.606(b) of the rules, the Television Table of Allotments.

2. On June 15, 1989, the Commission issued its Report & Order, for which petitions for reconsideration and clarification are pending.³ Nevertheless, the Commission's amendment of Section 1.420 of the rules was adopted to permit improvements to a station's facilities through changes to the table of allotments that will result in a better overall arrangement of allotments without placing the existing authorization at risk. The Commission stated that this procedure would be available in situations in which the new allotment would be mutually exclusive with the existing allotment and, further, that its determination on whether to grant such petitions will rest solely on consideration of whether the proposed change will result in a preferential arrangement of allotments. 4 FCC Rcd at 4873. The Commission also noted that this new procedure will not be available for use "if the effect would be to deprive a community of an existing service representing its only transmission service". Id. at 4874 (emphasis added). For the reasons set forth below, Word

² Also pending is an application (BMPCT-890614KG) to extend the KMPX construction permit.

³ On August 21, 1989, Word of God filed comments in that proceeding, raising matters addressed herein. For ease of reference, that pleading is attached hereto as Exhibit 1.

of God respectfully maintains that the proposed amendment to the table of allotments meets the Commission's criteria.

3. Section 73.610 of the Commission's rules requires a minimum distance separation of 174.5 miles between UHF stations in Zone II. Because Plano is approximately 55 miles from Decatur, Channel 29 would not otherwise be available for use in Plano due to the mutual exclusivity with its existing allotment to Decatur. The grant of this petition will also result in a preferential arrangement of allotments by allocating to Plano its first and only television broadcast station, thus serving the television allotment priority of providing each community with at least one television broadcast station.⁴ Finally, because KMPX is unbuilt, Decatur will not be deprived of an "existing" service, while the allotment of Channel 29 to Plano will significantly advance the Commission's service priorities, including the commencement of new television service, by assuring the financial and competitive viability of that new service to meet the growth and needs of its proposed service area.

4. In examining proposals such as this to change communities of license, the Commission stated

If adoption of the proposed allotment plan would result in a net benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments), we will adopt the proposal....We believe it is best to take into account the totality of the service improvements resulting from a proposed change in community of license when determining whether an allotment proposal should be approved....The Commission's policy is to apply the allotment

⁴ The television allotment priorities are set forth in the Report & Order, at n.8.

criteria in a flexible manner where circumstances warrant.

4 FCC Rcd at 4873-74. Finally, the Commission has generally been willing to apply the television priorities in a more liberal fashion due to the recognition that such service is more regional in nature. Id., at n.8.

5. With the above in mind, the proposed amendment to the Television Table of Allotments to reallocate Channel 29 to Plano, and the attendant change of the KMPX community of license, will result in the service improvements contemplated by the Commission's Report & Order. As noted in the attached engineering statement prepared by David P. Thompson, Director of Engineering for Word of God (Exhibit 2), Decatur has a population of 4,650 and Wise County, in which it is situated, contains 36,000 persons. In stark contrast, the current (January 1989) estimated population of Plano is 128,000 and Collin County, in which it is situated, contains 244,500 persons. In terms of service, the Grade B signal contour of and the population served by Channel 29 if allocated to Plano will, by definition, significantly increase. As a result of the proposed reallocation, KMPX's Grade B signal contour will cover an area of 10,614.7 square kilometers and a population (based on 1986 figures) of 3,433,909 people, significantly more than could be reached from KMPX at Decatur.⁵ In addition, Plano is a fast growing community

⁵ As presently authorized, KMPX would provide service to slightly more than 1.5 million persons. However, presently pending before the Commission is an application (BMPCT-880616KE) filed by Karen L. Hicks, the present permittee, requesting a modification of the construction permit. That application was amended on March 3, 1989. For reasons stated therein, KMPX is unable to construct at

whose service needs will correspondingly increase. See Exhibits 3A and 3B. Thus, it is clear that Channel 29 service from Plano will serve even more people than presently possible from Decatur.

6. As noted in Word of God's comments in the Report & Order proceeding, attached hereto as Exhibit 1, it is axiomatic that among the burdens facing permittees of unbuilt facilities is the difficult challenge of establishing a new service and competing for cable access as well as for viewers and advertising revenue from the most precarious position within any given market. Often, the fact that such facilities had not been applied for or built previously was indicative of the economic strength (or lack thereof) of the market and the ability of the subject community of license to support a new service. Such is the case with Channel 29 as allocated to Decatur. The present permittee, and proposed assignor, of KMPX represents the first attempt to construct this facility. The present difficulties involved in constructing that station aside, KMPX operating from Decatur can never provide both the viewer and economic bases, as well as the potential growth, available in Plano.

7. In the case of KMPX, factors such as population and economic shifts will govern the overall viability of the institution and continuation of this new television service. It is clear that in the case of a first local television service, Plano is a community

its presently authorized site requiring the prosecution of an application to a new site which will permit adequate city-grade coverage to Decatur. The amended proposal for KMPX will not immediately provide as much Grade B signal coverage as presently authorized, and in any event, Grade B or better service is markedly improved in all circumstances by operation of Channel 29 as a Plano allocation.

more likely to properly support KMPX by allowing the station much stronger bases on which to build and offer its service. Moreover, as the attached engineering study shows, at least three other unoccupied channels can be placed in Decatur through an appropriate petition for rule making by any interested party. Thus, reallocation of Channel 29 to Plano will not foreclose any future television operation from that community and, as KMPX is unbuilt and providing no existing service, the community can retain the same service potential.⁶

8. As noted previously, adoption by the FCC of this rule making proposal, amendment of the table of allotments and modification of KMPX's construction permit accordingly will serve both its allocation and service priorities by providing a healthier, more viable new service to a community more likely to support it. Such an approach is consistent with both the flexible application of the allotment criteria under the Report & Order as well as the considerable latitude generally afforded unbuilt stations. See, e.g., MCC Communications, 4 FCC Rcd 2079, 2081-82 (1989) (Commission has increased flexibility in viewing proposed modification to an unbuilt station's construction permit than it would in the case of an operating station providing existing service). Although KMPX is not

⁶ The Commission may wish to concurrently issue a Notice of Proposed Rule Making looking to the reallocation to Decatur of any of the channels available to it as set forth in the attached engineering statement. However, Word of God respectfully submits that the institution of such a proceeding should not impact on or delay consideration of the instant petition. Nevertheless, the Commission may wish to modify the attached Notice of Proposed Rule Making in accordance with the alternative language set forth in paragraph 3, and footnote 2 therein.

an "existing" service, the attached engineering statement observes that, at most, predicted KMPX Grade B service would be lost to 236,287 persons.⁷ Assuming such loss for these purposes, that population represents approximately 15 percent of those predicted to receive KMPX service from Decatur, and this loss is significantly outweighed by the prospect of a healthier, more competitive and more viable service to the remaining 85 percent of those expected to receive KMPX's predicted service. Further, the grant of this proposal is even more preferential from a service and allocation standpoint to the 1.9 million persons (or approximately 127 percent) increase over those persons currently expected to receive predicted service from KMPX. As was the case in MCC Communications, supra at 2082, the totality of circumstances here indicates that "the benefits of establishing a competitively viable television operation outweigh the loss of anticipated service in this case," which is rendered even more clear when the alternative represents less viable or effective first local television service.

9. It is clear that the proposed reallocation of Channel 29 to Plano serves the underlying objectives of the new community of license procedure. However, as the petitions for reconsideration and clarification of the Commission's Report & Order point out, it is not clear whether the Commission, in evaluating this proposal,

⁷ The grant of the pending application to modify the KMPX facilities, noted previously, would result in a lesser number of people that would lose KMPX predicted service. However, that is axiomatic due to the fact that KMPX cannot serve as many people as a whole as presently authorized. Moreover, as the attached engineering statement confirms, there is a multitude of services available to those expected to lose KMPX's predicted service.

will consider an unbuilt facility to be an "existing" service. For the reasons stated herein, it is respectfully submitted that construction permits are not "existing" services and do not provide that type of service contemplated by the Commission in adopting its limitation to this new procedure. In light of the above demonstration that the proposed allocation of Channel 29 to Plano serves the allocation priorities, results in desired service improvements, and otherwise meets the objectives of the Commission's Report & Order, Word of God believes that this petition may be granted pursuant to the new rule making procedure. However, should the Commission disagree, the petitioner respectfully maintains that adequate bases exist for a waiver of the limitation discussed in the Commission's Report & Order. Accordingly, and to the extent necessary, Word of God respectfully requests an appropriate waiver of Section 1.420 of the rules, as amended by the Report & Order, to permit the grant of this petition. Amendment of the table of allotments to reallocate Channel 29 to Plano will expand the potential coverage of KMPX to areas which would not otherwise receive its signal. Particularly due to the fact that the increased coverage and service area will permit a more competitively viable new television service to a community better able to support it than that to which it is presently allocated, the public interest benefit of more efficient use of the spectrum will clearly be achieved. In that regard, the grant of this petition will clearly serve the underlying goal of the Commission's Report & Order without undermining that policy. The public interest benefits to be realized by such action far outweigh

any potential harm that may result from the loss of anticipated Channel 29 service from Decatur. 10. Accordingly, Word of God requests that the television table of allotments be amended to reallocate Channel 29 from Decatur to Plano, Texas, and the construction permit for KMPX be modified to specify operation on that channel in the new community of license.

11. As permitted by Section 1.401(d) of the rules, a draft Notice of Proposed Rule Making is attached hereto.⁸

WHEREFORE, the premises considered, it is respectfully requested that the Commission initiate a rule making proceeding looking toward the amendment of Section 73.606(b) of its rules, to reallocate Channel 29 to specify the new community of license of Plano, Texas, and to modify the permit of Station KMPX(TV) to specify the new community of license.

Respectfully submitted,

WORD OF GOD FELLOWSHIP, INC.

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⁸ Alternative language has been provided in the draft notice of proposed rule making which can be used in the event it is determined that this proposal requires a waiver of amended Section 1.420(i) of the rules.

EXHIBIT 1

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment to the Commission's Rules
Regarding Modification of FM and TV
Authorizations To Specify a New
Community of License

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MM Docket No. 88-536
RM-6122

To: The Commission

COMMENTS ON PETITIONS
FOR RECONSIDERATION

Word of God Fellowship, Inc. ("Word of God"),¹ by its counsel, hereby proffers these Comments on the petitions for reconsideration and clarification of the Commission's action in Report and Order, MM Docket No. 88-526, FCC 89-128, released June 15, 1989 ("Report and Order"), in the above-captioned proceeding.

Introduction

1. Word of God generally supports the Commission's amendment of its Rules to permit FM and TV stations to seek the specification of a new community of license without risk to their present authorizations by petitioning to amend the relevant table of allotments. However, these comments are respectfully offered as to the matters raised in the petitions for reconsideration and clarification filed by Sinclair Telecable, Inc. ("Sinclair") and,

¹Word of God is the licensee of, and applicant for, various television authorizations. Word of God further intends to avail itself of this new procedure and seeks clarification for that purpose.

in part, by the National Association of Broadcasters ("NAB"), on that part of the Commission's decision to preclude the use of this new procedure "if the effect would be to deprive a community of its existing service representing its only transmission service." Report and Order ¶ 28.

2. Word of God agrees with Sinclair that that aspect of the Commission's decision was rendered without adequate notice and opportunity to receive comment, resulting in the potential for complex and unwarranted application of the new procedure. It also agrees that the Commission's decision is unclear as to the objective and application of this limitation to "existing" stations representing a community's "only transmission service." Moreover, Word of God agrees that there is no demonstrable need for adopting, or guidance to the staff for applying, this limitation on community of license moves.

COMMENTS

3. The Report and Order states specifically that this new procedure will not be available for use "if the effect would be to deprive a community of an existing service representing its only transmission service." Report and Order ¶ 28 (emphasis added). However, the text of that decision does not make clear whether an unbuilt facility would be considered an "existing" service.² Word of God respectfully submits that an unbuilt

²Word of God also agrees with Sinclair's and NAB's requests that the Commission must clarify its view with respect to the removal of a community's "only transmission service." For example, it is not clear whether a radio authorization (even an

facility cannot be considered to provide that type of existing "service" contemplated by the Commission in adopting this limitation. In fact, as set forth below, Word of God believes that the public interest will be better served by making this new procedure available, at the very least on a case-by-case basis, to the holders of construction permits.

4. It is axiomatic that among the burdens facing permittees of unbuilt facilities is the difficult challenge of establishing a new service and competing for viewers and advertising revenue from the most precarious position within any given market. Often, the fact that such facilities had not been applied for or built previously was indicative of the economic strength of the market and the ability of the subject community of license to support a new service, creating, overall, a risky financial proposition to applicants. In that regard, the Commission's adopted limitation does not recognize these and other factors such as population and economic shifts which, in the case of unbuilt facilities, may often be the very reason that institution of a new service is attempted.

5. Nevertheless, by making this procedure available to construction permit holders, the Commission would be able to at minimum consider whether a proposal to change communities of license will also enable the provision of a healthier, more

unbuilt facility) in a specific community would be sufficient to permit the move of that community's only television authorization. However, both the Sinclair and NAB pleadings adequately set forth the issue for the Commission's consideration.

viable new service to a community more likely to support it. Such an approach is consistent with the considerable latitude afforded unbuilt stations. See, e.g., MCC Communications, 4 F.C.C.2d 2079, 2081-82 (1989) (Commission has increased flexibility in viewing proposed modification to an unbuilt station's construction permit than it would in the case of an operating station providing existing service). Therefore, under appropriate circumstances, and consistent with the service and allocations factors underlying the amended rule and the increased latitude afforded construction permits, the Commission's recognition of these factors by, at minimum, exempting unbuilt facilities from its blanket limitation will not foreclose moves to communities experiencing such growth and increasing service needs, as well as artificially inhibit the highest growth and service potential for unbuilt facilities.

6. The Commission may also consider a host of other factors to ensure that such moves are consistent with the service improvement goals underlying the Report and Order. For example, of particular relevance in the case of unbuilt facilities would be whether other channels in the same service are available to the present community, either as listed in the table of allotments or available through an appropriate petition for rulemaking by any interested party. The Commission might also consider the extent to which the present community might receive from the unbuilt facility if moved and the extent to which the public interest might be better served by providing an overall

stronger, more viable service to that community than could otherwise be offered.

7. In any event, the intended application of this new provision is not achieved by a blanket prohibition on these types of moves, and particularly as to unbuilt facilities, without guidance as to the factors it would consider if exceptions to the preclusion, or waivers of the amended rule, are sought. So long as a proposed move serves the underlying objections of the new community of license procedure, an applicant should be afforded the opportunity to demonstrate how its specific proposal serves those objectives and the public interest. Moreover, the Commission's evaluation of such proposals should be made with the benefit of the totality of service improvement available, without establishing absolute preclusions to all relevant factors impacting on that determination.

8. Based on the above, Word of God supports Commission reconsideration and clarification of the Report and Order in this proceeding. It believes that absent reconsideration and clarification, application of the limitation to this new procedure as articulated in the Report and Order will defeat its underlying objectives.

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Respectfully submitted,

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August 21, 1989

CERTIFICATE OF SERVICE

I certify that on August 21, 1989, a copy of the foregoing Comments on Petitions for Reconsideration of Word of God Fellowship, Inc. was mailed, postage paid, to each of the following:

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